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TO : Commissioner for Patents
Mail Stop: Appeal Brief - Patent
FROM : Michael J. Marcin, Esq. of Fay Kaplun & Marcin, LLP
DATE : February 20, 2008
SUBJECT : U.S. Patent Appln. Serial No. 10/509,232
for *Detection And Alarm System*
Phillips Ref.: DE 020074

NUMBER OF PAGES INCLUDING COVER : 17

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Attorney Docket No. DE 020074US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Reiter et al.
Serial No. : 10/509,232
Filed : September 24, 2004
Title : Detection And Alarm System
Group Art Unit : 3735
Examiner : Robert L. Nasser
Confirmation No. : 3266

Mail Stop: Appeal Brief - Patent
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By: 	Date: February 20, 2008
Michael J. Marcin, Reg. 48,198	

TRANSMITTAL

In support of the Notice of Appeal filed on December 20, 2007, transmitted herewith please find an Appeal Brief for filing in the above-identified application. Please charge the Credit Card of **Fay Kaplun & Marcin, LLP** in the amount of \$510.00 (PTO-Form 2038 is enclosed herewith). The Commissioner is hereby authorized to charge the **Deposit Account of Fay Kaplun & Marcin, LLP NO. 50-1492** for any additional required fees. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

Dated: February 20, 2008

By: 
Michael J. Marcin, Reg. 48,198


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Dated: February 20, 2008

By: 
Michael J. Marcin, Reg. 48,198

FEB 20 2008Serial No.: 10/509,232
Attorney Docket No.: DE020074**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Reiter et al.

Serial No.: 10/509,232

Filed: September 24, 2004

For: DETECTION AND ALARM
SYSTEM

Confirmation No.: 3266

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Group Art Unit: 3735

Examiner: Robert L. Nasser

**Board of Patent Appeals and
Interferences****APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

In support of the Notice of Appeal filed on December 20, 2007, and pursuant to 37 C.F.R. § 41.37, Appellants present this appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's non-final rejection of claims 1-9 in the Final Office Action dated September 20, 2007. The appealed claims are set forth in the attached Claims Appendix.

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1. Real Party in Interest

This application is assigned to Koninklijke Philips Electronics N.V., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences that would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-9 have been rejected in the Non-Final Office Action. The non-final rejection of claims 1-9 is being appealed.

4. Status of Amendments

All amendments submitted by Appellants have been entered.

5. Summary of Claimed Subject Matter

The present invention, as recited in independent claim 1, is directed to a system (10) for detecting an abnormality in a physiological condition of a user and for alerting people to said abnormality. (See Specification, p. 5, ll. 17-25, Fig. 1a; p. 7, ll. 9-11, fig. 2). The system comprising monitor means (6) for monitoring a signal representative of the physiological condition. (See Specification, p. 6, ll. 5-6, Fig. 2). The monitor means (6) comprising a sensor means arranged to be located on the body of the user for detecting said signal (8). (See Specification, p. 6, ll. 6-14, Fig. 2). The monitor means further comprising a detection means (20) actuated by said sensor means and is arranged to process said signal in order to derive a feature in the signal characteristic to said abnormality. (See Specification, p. 6, ll. 26-30, Fig. 2). The monitor means further comprises an alarm means (15) arranged to trigger an alarm signal upon a detection of said feature by the detection means. (See Specification, p. 7, ll. 10-11, Fig. 2). The monitor means further comprises a transmission means (17) arranged to transmit the alarm signal to a station responsive to said alarm signal, characterized in that the detection means

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(20) are arranged on a user-side of the system, the alarm signal being the sole signal transmitted by the monitor means to said station. (See Specification, p. 7, ll. 9-15, fig. 2).

6. Grounds of Rejection to be Reviewed on Appeal

I. Whether claims 1, 2 and 6 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,785,650 Akasaka et al. (hereinafter "Akasaka").

II. Whether claims 3 and 4 are unpatentable under 35 U.S.C. § 103(a) over Akasaka in view of U.S. Pat. No. 6,287,252 to Lugo et al. (hereinafter "Lugo")

III. Whether claim 5 is unpatentable under 35 U.S.C. § 103(a) over Akasaka in view of U.S. Pat. No. 5,348,008 Bornn et al. (hereinafter "Bornn").

IV. Whether claim 7 is unpatentable under 35 U.S.C. § 103(a) over in view of U.S. Pat. No. 6,351,671 Myklebust et al. (hereinafter "Myklebust").

V. Whether claim 8 is unpatentable under 35 U.S.C. § 103(a) over Akasaka in view of U.S. Pat. App. No. 2003/0171661 Tong et al. (hereinafter "Tong").

VI. Whether claim 9 is unpatentable under 35 U.S.C. § 103(a) over Akasaka in view of Tong, further in view of Bornn.

7. Argument

I. The Rejection of Claims 1, 2 and 6 Under 35 U.S.C. § 102(b) as Being Anticipated by Akasaka Should be Reversed

A. The Examiner's Rejection

In the Non-Final Office Action, the Examiner rejected claims 1, 2 and 6 under 35 U.S.C. § 102(b) as being unpatentable over Akasaka. (See 09/20/07 Office Action, p. 2).

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Akasaka is directed toward a system for providing a medical organization, via a communication network, with a variety of medical data measured from an in-home patient monitor. Akasaka defines a stationary home unit that transmits patient data to a central unit monitored by medical personnel. In Akasaka, a patient at home may attach the home unit to him or herself to monitor health information, and transmit said information to the central unit. Medical personnel monitor data transmitted to the central unit and provide care based on the received data. (See Akasaka Abstract).

B. The Cited Patents Do Not Disclose Alarm Means Arranged To Trigger An Alarm Signal Upon A Detection Of Said Feature By The Detection Means, As Recited In Claim 1

Claim 1 recites an "alarm means arranged to trigger an alarm signal upon a detection of said feature by the detection means." The Examiner states that this recitation of claim 1 is disclosed in Akasaka at column 4, line 34 to column 5, line 15. (See 9/20/07 Office Action, p. 2). Appellants respectfully disagree. This passage from Akasaka states,

The vital sign detector incorporates a small-sized battery and continues to transmit a constant electrical signal as long as the detector can detect normal vital signs from the patient's body. If the patient stays within a predetermined area, the home unit 12 can receive the electrical signal representative of the vital signs. As long as the home unit continues to detect the electrical signal, which confirms that the patient is alive, the home unit 12 does not generate any response. However, once the detection of the signal is discontinued, the home unit 12 will automatically transmit an emergent signal to the center unit 14 without investigating the reason for the discontinuance.

However, Appellants submit that the alarm-signal from claim 1 is different from the emergent signal as stated in Akasaka.

Akasaka describes a vital sign detector that transmits a constant electrical signal to the home unit. The detector transmits the electrical signal as long as normal vital signs are detected. In the event that the electrical signal representing the vital signs is no longer detected, either because normal vital signs are not detected or because the patient has left a pre-determined area, the home unit transmits an emergent signal to the central unit. That is, Akasaka discloses a method including detection of the absence of a normal condition signal. This method is the

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direct opposite of what is recited in claim 1. Claim 1 recites an alarm means that is only activated upon the detection of a certain feature by the detection means. Akasaka does not disclose detection of a feature by a detection means. The absence of something cannot be construed as a feature of something. Appellants submit that an emergent signal, transmitted from the home unit to the central unit, triggered in the absence of a constant signal as stated in Akasaka is not the same as an alarm signal sent, from the monitor means to the home unit, upon the detection of a certain feature.

The Examiner states:

Akasaka triggers the alarm on the absence of a normal signal. It is the examiner's position that this means that instead of a normally varying signal, the alarm is generated when the signal flatlines. Detecting a constant non-varying signal is till detecting a feature of the signal.

(See 9/20/07 Office Action, p. 4).

Appellants respectfully submit that the Examiner has read well beyond the scope of the disclosure of Akasaka. There is no teaching in Akasaka that the home unit 12 detects a "normally varying signal" and an alarm is generated when the signal "flatlines." As described above, Akasaka discloses that a detector 29 on the person detects vital signals and if these signals are normal, the detector sends a signal to the home unit 12. If the detector 29 detects abnormal signals or is out of range of the home unit 12, the signal is not received by the home detector 12 and the home detector then sends an emergent signal to a center unit 14. Thus, the home detector 12 does not detect "varying signals" or "flatlines." It either receives a signal or does not receive a signal. As described above, the absence of a constant signal as stated in Akasaka is not the same as an alarm signal sent, from the monitor means to the home unit, upon the detection of a certain feature.

Thus, it is respectfully submitted that Akasaka does not disclose or suggest an "alarm means arranged to trigger an alarm signal upon a detection of said feature by the detection means" as recited in claim 1. Accordingly, Appellants respectfully request that the Board overturn the Examiner's rejection of this claim. Because claims 2 and 6 depend from, and

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therefore, include all the limitations of claim 1, it is respectfully submitted that these claims are allowable for at least the reasons stated above.

II. The Rejection Of Claims 3 and 4 Under 35 U.S.C. § 103(a) Over Akasaka In View Of Lugo Should Be Reversed.

A. The Examiner's Rejection

In the Non-Final Office Action, the Examiner rejected claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Akasaka in view of Lugo. (See 09/20/07 Office Action, pp. 2-3).

B. Lugo Does Not Cure the Above Described Deficiencies of Akasaka

Claims 3 and 4 depend from, and therefore, include all the limitations of claim 1; since Lugo does not overcome the deficiencies noted above in Akasaka, it is submitted that these claims are allowable for at least the reasons stated above. Therefore, Appellants respectfully request that the Board overturn the Examiner's rejection of these claims.

III. The Rejection Of Claim 5 Under 35 U.S.C. § 103(a) Over Akasaka In View Of Bornn Should Be Reversed.

A. The Examiner's Rejection

In the Non-Final Office Action, the Examiner rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Akasaka in view of Bornn. (See 09/20/07 Office Action, p. 3).

B. Bornn Does Not Cure the Above Described Deficiencies of Akasaka

Claim 5 depends from, and therefore, includes all the limitations of claim 1; since Bornn does not overcome the deficiencies noted above in Akasaka, it is submitted that these claims are allowable for at least the reasons stated above. Therefore, Appellants respectfully request that the Board overturn the Examiner's rejection of these claims.

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IV. The Rejection Of Claim 7 Under 35 U.S.C. § 103(a) Over Akasaka In View Of Myklebust Should Be Reversed.

A. The Examiner's Rejection

In the Non-Final Office Action, the Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Akasaka in view of Myklebust. (See 09/20/07 Office Action, p. 3).

B. Myklebust Does Not Cure the Above Described Deficiencies of Akasaka

Claim 7 depends from, and therefore, includes all the limitations of claim 1; since Myklebust does not overcome the deficiencies noted above in Akasaka, it is submitted that these claims are allowable for at least the reasons stated above. Therefore, Appellants respectfully request that the Board overturn the Examiner's rejection of these claims.

V. The Rejection Of Claim 8 Under 35 U.S.C. § 103(a) Over Akasaka In View Of Tong Should Be Reversed.

A. The Examiner's Rejection

In the Non-Final Office Action, the Examiner rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Akasaka in view of Tong. (See 09/20/07 Office Action, p. 3).

B. Tong Does Not Cure the Above Described Deficiencies of Akasaka

Claim 8 depends from, and therefore, includes all the limitations of claim 1; since Tong does not overcome the deficiencies noted above in Akasaka, it is submitted that these claims are allowable for at least the reasons stated above. Therefore, Appellants respectfully request that the Board overturn the Examiner's rejection of these claims.

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VI. The Rejection Of Claim 9 Under 35 U.S.C. § 103(a) Over Akasaka In View Of Tong In Further View Of Bornn Should Be Reversed.

A. The Examiner's Rejection

In the Non-Final Office Action, the Examiner rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Akasaka in view of Tong in further view of Bornn. (See 09/20/07 Office Action, pp. 3-4).

B. Tong and Bornn Do Not Cure the Above Described Deficiencies of Akasaka

Claim 9 depends from, and therefore, includes all the limitations of claim 1; since Tong in further view of Bornn does not overcome the deficiencies noted above in Akasaka, it is submitted that these claims are allowable for at least the reasons stated above. Therefore, Appellants respectfully request that the Board overturn the Examiner's rejection of these claims.

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8. Conclusion

For the reasons set forth above, Appellants respectfully request that the Board reverse the rejection of the claims by the Examiner under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a), and indicate that claims 1-9 are allowable.

Respectfully submitted,

Date: February 20, 2008

By: 
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CLAIMS APPENDIX

1. (Original) A system for detecting an abnormality in a physiological condition of a user and for alerting people to said abnormality, said system comprising monitor means for monitoring a signal representative of the physiological condition, said monitor means comprising:
 - sensor means arranged to be located on the body of the user for detecting said signal;
 - detection means actuated by said sensor means and arranged to process said signal in order to derive a feature in the signal characteristic to said abnormality;
 - alarm means arranged to trigger an alarm signal upon a detection of said feature by the detection means; and
 - transmission means arranged to transmit the alarm signal to a station responsive to said alarm signal, characterized in that the detection means are arranged on a user-side of the system, the alarm signal being the sole signal transmitted by the monitor means to said station.
2. (Original) A system according to claim 1, characterized in that the station is a stationary home-based station arranged to forward the alarm signal to a remote service center.
3. (Original) A system according to claim 2, characterized in that said home-based station is further arranged to control a domestic device.
4. (Original). A system according to claim 1, characterized in that the station is a mobile station arranged to forward the alarm signal to a remote service center and in that said system further comprises positioning means actuated by the alarm means, said positioning means being arranged to determine a location of the user and to transmit a signal representative to said location to said remote service center.
5. (Previously Presented) A system according to claim 1, characterized in that the user-side of the system further comprises range detection means arranged to validate that the user is located within an operational range of the station.

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6. (Previously Presented) A system according to claim 1, characterized in that said abnormality in the physiological condition is a condition of the cardiac arrest.
7. (Original) A system according to claim 5, characterized in that the system further comprises an automatic external defibrillator device provided with a telephone module actuatable by the remote service center in case of an emergency.
8. (Previously Presented) A system according to claim 1 characterized in that the monitor means further comprise a motion sensor arranged to monitor a physical activity of the user.
9. (Original) A system according to claim 8, characterized in that the monitoring means are integrated in a wearable garment.

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EVIDENCE APPENDIX

No evidence has been entered or relied upon in the present appeal.

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RELATED PROCEEDING APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings
related thereto.